



Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS-SC-23-0006]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Walla Walla Sweet Onion Marketing Committee (Committee) to increase the assessment rate established for the 2023 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: DaleJ.Novotny@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of

southeast Washington and northeast Oregon. Part 956 referred to as the “Order” is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers and handlers of Walla Walla sweet onions operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988 – Civil Justice Reform. Under the Order now in effect, Walla Walla sweet onion handlers are subject to

assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable Walla Walla sweet onions for the 2023 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate for Walla Walla sweet onions handled under the Order from \$0.15 per 50-pound bag or equivalent, the rate that was established for the 2020 and subsequent fiscal periods, to \$0.20 per 50-pound bag or equivalent for the 2023 and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2020 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.15 per 50-pound bag or equivalent of Walla

Walla sweet onions. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on December 5, 2022, and unanimously recommended 2023 fiscal period expenditures of \$70,400 and an assessment rate of \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2023 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were \$85,270. The proposed assessment rate of \$0.20 per 50-pound bag or equivalent is \$0.05 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better fund operations using assessment revenue and reduce the reliance on reserve funds. The Committee has drawn down its financial reserve in recent years to cover Committee expenses and to reduce the reserve to not exceed approximately two fiscal periods' budgeted expenses, in conformance with the Order (7 CFR 956.44(a)). The Committee projects handler receipts of 262,500 50-pound bags or equivalent of assessable Walla Walla sweet onions for the 2023 fiscal period, which is 16,150 50-pound bags or equivalent more than was projected for the 2022 fiscal period.

The major expenditures budgeted by the Committee for the 2023 fiscal period include \$43,400 for administrative expenses, \$17,000 for promotions, \$5,000 for research, and \$5,000 for Committee travel. Budgeted expenditures for the 2022 fiscal period were \$43,400, \$31,870, \$5,000, and \$4,000, respectively.

Walla Walla sweet onions harvested in 2023 will be marketed mostly in the spring and summer of the 2023 fiscal period, which follows the calendar year. The expected 262,500 50-pound bags or equivalent of Walla Walla sweet onions from the 2023 crop will generate \$52,500 in assessment revenue at the increased assessment rate (262,500 50-pound bags or equivalent of Walla Walla sweet onions multiplied by \$0.20 assessment rate). The remaining \$17,900 needed to cover budgeted expenditures will

come from reserve funds carried over from previous fiscal periods. The 2023 fiscal period assessment rate increase will be appropriate to ensure the Committee has sufficient revenue, along with its reserve, to fully fund its 2023 fiscal period budgeted expenditures and maintain a level of reserve funds that the Committee believes is appropriate.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, an estimated 2023 crop volume of 262,500 50-pound bags or equivalent of assessable Walla Walla sweet onions, and the amount of funds available in the authorized reserve. Income derived from handler assessments (\$52,500) and funds from the Committee's authorized reserve (\$17,900) will be adequate to cover budgeted expenses (\$70,400).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken, as necessary. The Committee's 2023 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 15 producers of Walla Walla sweet onions in the production area and 11 handlers subject to regulation under the Order. Small agricultural producers of Walla Walla sweet onions are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$3,750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average annual producer price received for dry and fresh market onions sold in Washington between 2018 and 2021 ranged from \$9.13 to \$13.30 per hundredweight. The average over those years was approximately \$10.88 per hundredweight, or \$5.44 per 50-pound bag or equivalent. Total production of Walla Walla sweet onions for the 2022 season was reported by the Committee to be 299,993 50-pound bags or equivalent. Using the average price from 2018-2021, the most recent years for which there is NASS data, the total 2022 crop value of Walla Walla sweet onions could therefore be estimated to be \$1,631,962 (299,993 50-pound bags or equivalent multiplied by \$5.44 per 50-pounds). Dividing the crop value by the estimated number of producers (15) yields an estimated

average receipt per producer of \$108,797, which is well below the SBA threshold for small producers.

In addition, according to USDA Market News data, the reported average 2021 terminal market price for Walla Walla sweet onions was \$35 per 40-pound carton. Multiplying this figure by 1.25 to adjust for a 50-pound bag or equivalent yields an average 2021 terminal market price of \$43.75 per 50-pound bag or equivalent. Multiplying the 2022 Walla Walla sweet onion production of 299,993 50-pound bags or equivalent by the estimated average price per 50-pound bag or equivalent of \$43.75 equals \$13,124,694. Dividing this figure by the 11 regulated handlers yields estimated average annual handler receipts of \$1,193,154 (\$13,124,694 divided by 11 handlers), which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, all of the producers and handlers of Walla Walla sweet onions may be classified as small entities.

This final rule increases the assessment rate collected from handlers for the 2023 and subsequent fiscal periods from \$0.15 to \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions. The Committee unanimously recommended 2023 fiscal period expenditures of \$70,400 and an assessment rate of \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions. The assessment rate of \$0.20 is \$.05 higher than the current rate. The Committee expects the industry to handle 262,500 50-pound bags or equivalent of Walla Walla sweet onions during the 2023 fiscal period. Thus, the \$0.20 per 50-pound bag or equivalent rate will provide \$52,500 in assessment income (262,500 50-pound bags or equivalent multiplied by \$0.20). The Committee also expects to use \$17,900 from its financial reserve to cover remaining expenses. Income derived from handler assessments, along with reserve funds, will be adequate to meet budgeted expenditures for the 2023 fiscal period.

The major expenditures budgeted by the Committee for the 2023 fiscal period include \$43,400 for administrative expenses, \$17,000 for promotions, \$5,000 for research, and \$5,000 for Committee travel. Budgeted expenditures for the 2022 fiscal period were \$43,400, \$31,870, \$5,000 and \$4,000, respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to better fund 2023 fiscal period budgeted expenditures and refrain from excessively drawing down the funds held in its reserve. This action will maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and the current assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.15 per 50-pound bag or equivalent and increasing the assessment rate by different amounts. The Committee determined that the recommended increased assessment rate will be able to fund most of the budgeted expenses and avoid drawing down reserves at an unsustainable rate. The assessment rate of \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions was derived by considering anticipated expenses, the projected volume of assessable Walla Walla sweet onions, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2018-21 fiscal period was \$5.44 per 50-pound bag or equivalent. Further, the Committee reported the quantity of assessable Walla Walla sweet onions harvested in the 2022 fiscal period was 299,993 50-pound bags or equivalent, which yields estimated total producer revenue for 2022 of \$1,631,962 (\$5.44 per 50-pound bag or equivalent multiplied by 299,993). Therefore, utilizing the assessment rate of \$0.20 per 50-pound bag or equivalent, assessment revenue for the 2022 fiscal period, as a percentage of total

producer revenue, will be approximately 3.68 percent (\$0.20 multiplied by 299,993 per 50-pound bags or equivalent divided by \$1,631,962 and multiplied by 100).

This action increases the assessment obligation imposed on handlers.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The Walla Walla sweet onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 5, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 16, 2023 (88 FR 39377). Copies of the proposed rule were also mailed or sent via email to all Walla Walla sweet onion handlers. A copy of the proposed rule was made available through the internet by AMS via <https://www.regulations.gov>. A 30-day comment period ending July 17, 2023, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 956 as follows:

PART 956 - SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON.

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 956.202 to read as follows:

§ 956.202 Assessment rate.

On and after January 1, 2023, an assessment rate of \$0.20 per 50-pound bag or equivalent is established for Walla Walla sweet onions.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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